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ON THE NEED TO AMEND CHAPTER XV OF THE SPECIAL SECTION OF THE CRIMINAL CODE OF UKRAINE

Анотація. Стаття присвячена питанню встановлення кримінальної відповідальності за злочини проти журналістів. Визначені проблемні питання дослідження даної тематики. Проаналізовані основні дослідження і публікації з питань, що досліджуються. Вказана необхідність запровадження такої відповідальності.

Ключові слова: кримінальна відповідальність, злочини проти журналістів, погроза або насильство щодо журналіста, знищення або пошкодження майна журналіста, посягання на життя журналіста.

Аннотация. Статья посвящена вопросу установления уголовной ответственности за преступления против журналистов. Определены проблемные вопросы исследования данной тематики. Проанализированы основные исследования и публикации по вопросам, которые исследуются. Исследована необходимость введения такой ответственности.

Ключевые слова: уголовная ответственность, преступления против журналистов, угроза или насилие в отношении журналиста, уничтожение или повреждение имущества журналиста, посягательство на жизнь журналиста.

Abstract. The article is devoted to the issue of establishing criminal liability for crimes against journalists. Areas of research on this subject are identified. The basic research and publications on issues are reviewed. The need for introducing such liability is investigated. It is indicated that several special crimes against journalists were added to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on strengthening guarantees of journalistic activities" Criminal Code of Ukraine: 1) threats or violence against a journalist (art. 345-1 of the Criminal Code); 2) intentional destruction or damage to property of a journalist (art. 347-1 of the Criminal Code); 3) attempt on the life of a journalist (art. 348-1 of the Criminal Code); 4) hostage seizure of a journalist (art. 349-1 of the Criminal Code). Deficiencies are identified in the existence of separate groups of crimes - crimes against journalists due to the presence in the existing criminal law norms that punish such acts. It is also concluded that the introduction of special rules to the criminal law Ukraine should be conditional on increased (or reduced) level of social danger of the act versus offense under the general rule. It is claimed that journalists should be provided protection by the criminal law, but without creating more competition and overloading the Criminal Code of Ukraine.

Key words: criminal responsibility, crimes against journalists, threats or violence against journalists, the destruction of or damage to property journalist, attempt on the life of a journalist.

Formulation of the problem. The need for improving the efficiency of the criminal laws of Ukraine on liability for various kinds of abuse is undoubtful, including - and encroachment on the authority of state agencies, local governments, NGOs and journalists. However, improving the standards of the Criminal Code of Ukraine should be subject to criminal legal science on feasibility and validity of introducing a number of amendments to the Criminal Code.

Analysis of key studies and publications. Issues of criminal responsibility for crimes against credibility of public authorities, local governments and journalists in

the theory of criminal law was given some attention in the research of such scholars as G. Andrusiv, Yu. Baulin, L. Brych, V. Dziuba, L. Dorosh, P. Elizarov, M. Zhuravlev, M. Zahorodnykov, P. Zamoskovtsev, V. Klimenko, O. Kostenko, S. Lyhova, Yu. Lyapunov, V. Maltsev, N. Melnik, M. Menshahin, V. Navrotskyi, V. Osadchiy, M. Panov, G. Polenov, A. Savchenko, E. Sukharev, M. Havronyuk, V. Shakun, S. Yatsenko, N. Yarmysh and others.

Unsolved problems. Previous research of crimes against journalists in connection with the recent inclusion of one of the rules of the Criminal Code was not conducted.

That is why **the purpose of the article** is to clarify the necessity and appropriateness of adding special rules on responsibility for crimes against journalists to the current Criminal Code.

Presenting main material. Under the provisions of Art. 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, free expression of opinions and convictions [1]. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise. Citizens of Ukraine implement the said constitutional law directly and independently, as well as by legal professional activities of journalists.

As indicated in Recommendation № R (96) 4 "On protection of journalists in situations of conflict and tension" (adopted on 3 May 1996 at the 98th session) [2], in a democratic society, freedom of media and free and unhindered exercise of journalism are important to inform the public, as well as for free formation and expression of opinions and ideas. It is also important to control the activities of public authorities.

Given this, the Committee of Ministers of the Council of Europe recommended to national governments to be guided in their activities and policies by the fundamental principles related to protection of journalists who work in situations of conflict and tension, as set out in the Annex to the above recommendations, and to use them without restrictions and discrimination on any ground to foreign and local

journalists. According to principle No.8, member states of the Council of Europe should instruct their military and police forces to give journalists necessary and reasonable protection and assistance if they need them, and treat them as civilians. In situations of conflict and tension, member states of the Council of Europe should investigate incidents on the physical safety of journalists occurring within their jurisdiction. They should give due consideration to reports of journalists, media organizations and professional organizations which draw attention to such attacks and, if necessary, take appropriate follow-up actions. Member States of the Council of Europe should use all necessary means to bring to justice those behind these violations, whether planned, encouraged or carried by persons belonging to terrorist or other organizations, persons working for the government or other public authorities, or persons acting on their own discretion [2].

Events in November 2013 – February 2014 in Ukraine demonstrated the vulnerability of journalists, as evidenced by numerous cases of obstruction to journalistic activities, damage of their property, threats or violence against them. The vast majority of crimes against journalists is carried out by the public authorities or at their direction, or in their immediate assistance.

The aforementioned confirms the need to establish additional legal security guarantees to journalistic activities, including strengthening of criminal responsibility for crimes against journalists [3]. To this end, draft Law No.0924 from 11.27.2014 "On Amendments to Certain Legislative Acts of Ukraine on strengthening the guarantees of journalistic activities" was registered in Verkhovna Rada of Ukraine.

The purpose of this draft Law was to introduce the European standards in the legislative regulation of the security guarantees to journalistic activities, as well as to make changes in the Criminal Code of Ukraine to establish responsibility for a number of specific offenses: 1) Threats or violence towards journalist, including for the implementation of such threats or violence by a law enforcement officer, or any other official (Art. 345-1, p. 345-2 of the Criminal Code); 2) intentional destruction or damage to property of a journalist (art. 347-1 of the Criminal Code); 3)

encroachment on life of a journalist (art. 348-1 of the Criminal Code); 4) journalist's seizure as hostage (art. 349-1 of the Criminal Code) [4]. Upon the required legislative procedures 05.14.2015, The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on strengthening guarantees of journalistic activities" was adopted. It introduced several special elements of crimes against journalists to the Criminal Code (arts 345-1, 347-1, 348-1, 349-1 of the Criminal Code) and supplemented by provisions of Art. 18 of the Law of Ukraine "On state support of mass media and social protection of journalists" and establishment the State's obligation in respect of the journalist and his close relatives in connection with implementation into legal professional activities of special state protection measures provided by the legislation for court staff and law enforcement agencies.

Following the adoption of the Law, law enforcement officials started implementing it and by the end of 2015 declared suspicions to 18 people suspected of crimes related to obstruction of journalists, as stated in the press release of the Prosecutor 's Office of Ukraine [5].

At the same time, adoption of the aforementioned Law can not be considered sufficiently justified. Thus, the introduction of individual criminal responsibility for death threats, violence, destruction or damage to property of a journalist or their close relatives or family members, intentional infliction of a journalist or their close relatives or family members, beatings, light, moderate or severe injuries in connection with his professional activity (art. 345-1 of the Criminal Code) does not appear legally justified. It criminalizes acts already covered by the current Criminal Code, in particular, if obstruction to journalistic activities was carried out by death threats or use of violence, as well as directly committing violence on the grounds set should be classified as crimes under Art. 171 of the Criminal Code and in accordance with Articles 121, 122, 125-127, 129 of the Criminal Code (the time of entry into legal force specified by law). If the obstruction of journalistic activities was out by the destruction of or damage to property (art. 347-1 of the Criminal Code), it should be classified as a crime under Art. 171 and Art. 194 of the Criminal Code (the time of

entry into legal force specified by law). Similarly, a murder or attempted murder of a journalist, their close relatives or family members in connection with their legitimate professional journalistic activities (art. 348-1 of the Criminal Code) are currently qualified according to paragraph 8, part 2 of Article 115 of the Criminal Code (the time of entry into legal force specified by law). Furthermore, legally flawed is the proposal to establish the same punishment for murder as well as for attempted murder of a journalist (art. 348-1 of the Criminal Code).

According to specialists of the Main Scientific Expert Department of the Verkhovna Rada of Ukraine, introduction of special norms to the criminal law of Ukraine should follow to the increased (or reduced) level of social danger of an act versus the offense regulated by the general norm [6]. In this case, murder of a journalist linked to his professional activities, is unlikely to be more or less socially dangerous in comparison to, for example, the murder of a defense attorney or person that qualifies for part 2 of Art. 115 of the Criminal Code.

Additionally, doubts are raised as for the section of the Criminal Code to be amended. The general subject of crimes under Section XV «Crimes against the authority of state agencies, local governments and associations of citizens» of the Criminal Code is a normal activity of these bodies and their authority. Their life, health and rights come as additional subjects. In turn, the objects of the proposed draft Law are life, health and property rights of journalists.

Also, it is worth keeping in mind the basic principles of reforming the criminal justice system. The Decree of the President of Ukraine on April 8, 2008 № 311/2008 approved the Concept of reforming the criminal justice system of Ukraine, which is based on centuries-old national traditions of law-making, the provisions of domestic criminal law, which passed the test of time and justified practice, progressive institutions of the legal systems of EU member states and international law [7]. The objective of the Concept is to create a scientifically sound methodological basis, to determine the content and direction of reforming the criminal justice system,

including humanization of criminal legislation. Nota bene: it is "humanization of criminal responsibility" rather than its enhancing!

Several other related draft Laws of Ukraine are worth listing: "On Amendments to the Criminal Code of Ukraine concerning the introduction of criminal offenses" (Registry No 10146 from 3.03.2012), "On amendments to the Criminal Code of Ukraine on introduction of criminal offenses" (Registry No 10126 from 28.02.2012), "On amendments to the Criminal and Criminal Procedural Codes of Ukraine on introduction of criminal offenses" (Registry No 3438 from 10.17.2013), "On amendments to some legislative acts of Ukraine to implement the provisions of the Criminal Procedure Code of Ukraine" (Registry No 4712 from 04.16.2014). Analysis of these draft Laws shows that their main conceptual principles are similar and related amendments to paragraph 8, part 2, Art. 115 of the Criminal Code and the exclusion of articles 112, 348, 379, 400, 443 as those that contain discriminatory provisions as attacks on human life, regardless of their occupation can not be punished with varying degrees of punishment. However, law enforcement bodies are advised to use in all cases the provisions of §8, part 2 of Article 115 of the Criminal Code concerning responsibility for murder "of a person or its close person in connection with their official or public duty" [8]. In addition, the draft law "On amendments to some legislative acts of Ukraine to implement the provisions of the Criminal Procedure Code of Ukraine" proposes to enhance the responsibility for some violent crimes, serious bodily injury and aggravating circumstances as well as for causing injuries, other violence and threats of violence, destruction or damage of property and threat of destruction or damage, kidnapping and deprivation of liberty committed "against a person or a member of his family or close relatives in connection with that person's official or public duty", and are excluded from the Criminal Code articles 345, 346, 349, 377, 378, 398, 399 and others.

Conclusions. The above demonstrates legislator's gradual rejection of the so-called special rules and liability, in this case, for crimes against life and health (Art.

115, 121 – 126 of the Criminal Code), against freedom, honor and dignity (Art. 147 of the Criminal Code), against property (Art. 194 of the Criminal Code).

It is worth taking into account the opinion of M. Havronyuk about indirect evidence of the state's democracy level in the need to incorporate the total number of norms of the Criminal Code: the lesser amount of acts are criminalized, the lesser is the likelihood that the state places much emphasis on repressive methods of organizing social relations. An extremely large number of norms of the Criminal Code is an indication of the possibility that some of them overlap, creating unwanted competition of the norms, and the level of legal education and legal consciousness of population and legislators is relatively low, requiring excessive details and casuality in formulating of criminal regulations [9, p. 257-258].

REFERENCES:

1. The Constitution of Ukraine of 28.06.1996 p. [electronic resource]. – Access to the document:

<http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

2. Recommendation NR (96) 4 of the Committee of Ministers "On protection of journalists in situations of conflict and tension" [electronic resource]. – Access to the document:

http://zakon2.rada.gov.ua/laws/show/994_734

3. The explanatory note to the bill number 0924 from 11.27.2014. "On Amendments to Certain Legislative Acts of Ukraine on strengthening the guarantees of journalistic activities" [electronic resource]. – Access to the document:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52566

4. The draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on strengthening guarantees of journalistic activities" (Reg. № 0924 from 11.27.2014 g.) [Electronic resource]. – Access to the document:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52566

5. GPO announced 18 individuals suspected of crimes against journalists [electronic resource]. – Access to the document:

http://espreso.tv/news/2015/11/23/gpu_ogolosyla_18_osobam_pro_pidozru_za_zlochyny_proty_zhurnalistiv

6. Conclusion of the Main Scientific Expert Department of the Verkhovna Rada of Ukraine the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on strengthening guarantees of journalistic activities" [electronic resource]. – Access to the document:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52566

7. The concept of criminal justice reform Ukraine: Ukraine approved by the Presidential Decree № 311/2008 from 04.08.2008 g. [Electronic resource]. – Access to the document:

<http://zakon4.rada.gov.ua/laws/show/311/2008>

8. Draft Law of Ukraine "On amendments to some legislative acts of Ukraine to implement the provisions of the Criminal Procedure Code of Ukraine" (Reg. № 4712 from 04.16.2014 g.) [Electronic resource]. – Access to the document:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50664

9. Havronyuk M. Criminal legislation of Ukraine and other countries of continental Europe: a comparative analysis of the problems of harmonization: monograms. / M. Havronyuk – K. : Yurysconsult, 2006. – 560 p.